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EXAMINER				
RAJAN, KAI				
ART UNIT		PAPER NUMBER		
3769				
NOTIFICATION DATE		DELIVERY MODE		
03/09/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

## Application No.

10/530,494

## Applicant(s)

SUCH ET AL.

## Examiner

Kai Rajan

## Art Unit

3769

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The Examiner acknowledges the amendment filed February 2, 2010. Furthermore, the case has been transferred to Examiner Kai Rajan for further prosecution.

### **Continued Examination Under 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 2, 2010 has been entered.

### **Response to Arguments**

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. Applicant is invited to request an interview to discuss the new rejection and suggestions to advance prosecution of the case.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1 – 9, 11 – 13, 16 – 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menard U.S. Patent No. 7,138,902 B2 in view of Besson et al. U.S. Patent No. 6,289,238 B1 (“Besson”).**

Regarding claim 1, Menard discloses a system for monitoring a physiological condition of an individual, comprising

a sensor arranged to pick up a first signal in a first mode of the system, the first signal being representative of the physiological condition (Menard column 3 lines 20 – 35 personal medical device 100 includes attached or embedded physiological sensors including at least temperature, respiration, ECG, EEG, and blood oxygen, which are all representative of physiological conditions) and

to forward the first signal to a signal processing unit (Menard column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36, column 14 lines 32 - 59 central communication station 700 communicates wirelessly with personal medical device),

a control unit arranged to be positioned remote from the signal processing unit and to be selectively actuated to effect a system mode change (Menard column 3 lines 20 – 35, column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36, column 14 lines 32 - 59 remotely located central communication station 700 communicates wirelessly with personal medical device and sends the device instructions, as well as requesting data and sending radio frequency signals to turn on the medical device from a power-off state),

the control unit being arranged to generate a second signal and transmit the second signal to the sensor (Menard column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36,

column 14 lines 32 - 59 central communication station 700 communicates wirelessly with personal medical device and sends the device instructions, as well as requesting data and sending radio frequency signals to turn on the medical device from a power-off state),

the signal processing unit being arranged to decode the second signal and to make the system enter into a second mode upon receipt of the second signal (Menard column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36, column 14 lines 32 - 59 central communication station 700 communicates wirelessly with personal medical device and sends the device instructions, as well as requesting data and sending radio frequency signals to turn on the medical device from a power-off state),

Menard discloses bidirectional wireless radio frequency data transmission between system components using a plurality of protocols and frequencies, where data transmission includes digital instructions and commands to power on a patient monitoring device (Menard column 3 lines 56 - 67, column 4 lines 1 - 51, column 11 lines 12 - 59, column 14 lines 32 - 59). Menard fails to disclose transmitting command signals as a "disturbance" of a second data transmission containing physiological data. However, Besson a reference in an analogous art of physiological data monitoring and transmission discloses pseudo-noise coding and direct frequency transmission, where a signal being transmitted on one frequency band is modulated with a second signal wave, thereby transmitting a message as "noise" within another signal, where a receiver decodes the second signal message (Besson column 15 lines 24 - 43). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the wireless radio frequency transmission of Menard with the pseudo-noise coding transmission of Besson, since pseudo-noise transmission is a known technique in the relevant art of wireless data

transmission, and since Besson states that pseudo-noise coding permits parallel transmission of different messages on one band, and is insensitive to interference (Besson column 15 lines 24 - 43).

2. The system according to claim 1, wherein

the control unit comprises an electrode arranged to be in contact with the individual's skin (Menard column 3 lines 20 - 35 personal medical device 100 includes attached or embedded physiological sensors including at least temperature, respiration, ECG, EEG, and blood oxygen), the electrode being arranged to transmit the second signal.

3. The system according to claim 2, wherein the system further comprises an RF-link arranged to establish a wireless communication to a remote base unit, the second signal being a trigger signal for the RF-link to perform a predetermined operation (Menard column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36, column 14 lines 32 - 59 central communication station 700 communicates wirelessly with personal medical device and sends the device instructions, as well as requesting data and sending radio frequency signals).

4. The system according to claim 2, wherein the second signal comprises data to be processed by the signal processing unit (Menard column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36, column 14 lines 32 - 59 central communication station 700 communicates wirelessly with personal medical device and sends the device instructions, as well

as requesting data and sending radio frequency signals to turn on the medical device from a power-off state).

5. The system according to claim 1, wherein the second signal has a same bandwidth as the first signal, the amplitude of the second signal being at least one order of magnitude smaller than the amplitude of the first signal (Besson column 15 lines 24 – 43 different signal messages transmitted over a single band).

Claims 6 and 7 are rejected on substantially the same basis as claims 1 and 2 above.

8. The personal monitoring system according to claim 6, wherein the control unit comprises a user interface arranged to operate the control unit in a manual mode (Menard column 4 lines 1 – 5 user interface on the personal medical device allows manual operation).

9. The personal monitoring system according to Claim 8, wherein the control unit comprises a data input port and a display (Menard column 3 lines 49 – 67, column 4 lines 1 – 5 personal medical device comprises a screen and I/O ports).

11. The personal monitoring system according to claim 6, wherein upon receipt of the trigger signal, the personal monitoring system is arranged to perform a dedicated wakeup sequence (Menard column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36,

column 14 lines 32 – 59 personal medical device receives device instructions via radio frequency signals and turns on the medical device from a power-off state).

12. The personal monitoring system according to claim 11, wherein the dedicated wake-up sequence includes turning on of an RF-link that is otherwise always in an off-state unless responding to a prior dedicated wake-up sequence (Menard column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36, column 14 lines 32 – 59 personal medical device receives device instructions via radio frequency signals and turns on the medical device from a power-off state).

13. The personal monitoring system according to claim 6, wherein the control unit is arranged to transmit the trigger signal as dual-tone signal (Besson column 15 lines 24 – 43 different signal messages transmitted over a single band thus constituting at least two tones).

16. The personal monitoring system according to claim 1, wherein upon receipt of the trigger signal, the signal processing unit is arranged to perform a dedicated wakeup sequence (Menard column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36, column 14 lines 32 – 59 personal medical device receives device instructions via radio frequency signals and turns on the medical device from a power-off state).

17. The personal monitoring system according to claim 16, wherein the dedicated wake-up sequence includes turning on of an RF-link that is otherwise always in an off-state unless



responding to a prior dedicated wake-up sequence (Menard column 8 lines 49 - 58, column 11 lines 13 - 59, column 12 lines 31 - 36, column 14 lines 32 - 59 personal medical device receives device instructions via radio frequency signals and turns on the medical device from a power-off state).

Claim 18 is rejected on substantially the same basis as claim 13.

Claim 21 is rejected on substantially the same basis as claim 1.

**Claims 14-15 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menard U.S. Patent No. 7,138,902 B2 in view of Besson et al. U.S. Patent No. 6,289,238 B1 ("Besson"), as applied to claims 13 and 18 above.**

In regards to claims 14, 15, 19, and 20, Menard and Besson disclose wireless radio frequency transmission between system components using a plurality of transfer protocols and frequencies using pseudo-noise signals, but fail to disclose a dual-tone transmission arranged as a substantially 29.5 Hz continuous wave and 22.5 Hz on-off keyed signal or a substantially 129.5 Hz continuous wave and 122.5 Hz on-off keyed signal. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to set the signal as a substantially 29.5 Hz continuous wave and 22.5 Hz on-off keyed signal or a substantially 129.5 Hz continuous wave and 122.5 Hz on-off keyed signal because Applicant

had not disclosed that these exact settings provided an advantage, are used for a particular purpose, or solved a stated problem.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kai Rajan whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/  
Examiner, Art Unit 3769

/Henry M. Johnson, III/  
Supervisory Patent Examiner, Art Unit  
3769

March 1, 2011